

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DEMOND O'NEIL PARKER,

Petitioner,

v.

Civil Action No. 5:18CV169
(STAMP)

FREDERICK ENTZEL, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Procedural History

The pro se¹ petitioner, Demond O'Neil Parker, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.² ECF No. 1. The petitioner is currently incarcerated at FCI Hazelton in Bruceton Mills, West Virginia. In his petition, petitioner challenges the validity of his conviction from the Western District of Virginia.³ ECF No. 1. Specifically, petitioner alleges that

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1416 (10th ed. 2014).

²This Court notes that the magistrate judge's report and recommendation erroneously states "Jennifer Saad, Warden" in the case caption. Upon review of the petition and the docket, this Court finds that the case caption is correctly styled as Warden Entzel as the respondent.

³This Court notes that the magistrate judge's report and recommendation erroneously states "Western District of Texas" once in the introduction paragraph, but then correctly cites to the Western District of Virginia throughout the remainder of the report and recommendation.

his conviction under Count Sixteen stems from a duplicitous indictment in violation of his rights under the Fifth Amendment. ECF No. 1 at 5. For relief, the petitioner requests this Court "vacate [his] conviction and sentence on Count Sixteen, then dismiss the indictment with prejudice." Id. at 8. Petitioner also requests his "conviction be vacated on Count One, and it be remanded for a re-trial." Id.

This civil action was referred to United States Magistrate Judge James P. Mazzone under Local Rule of Prisoner Litigation Procedure 2. Magistrate Judge Mazzone issued a report and recommendation (ECF No. 8) recommending that the petitioner's petition (ECF No. 1) be denied and dismissed without prejudice for lack of jurisdiction. ECF No. 8 at 7-8. The petitioner did not file objections to the report and recommendation. For the following reasons, this Court affirms and adopts the report and recommendation in its entirety.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to findings where no objections were made, such findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). Because the petitioner did not file any objections to the report and recommendation, the

magistrate judge's findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

III. Discussion

In his report and recommendation, the magistrate judge correctly noted that in the instant case, "[a]lthough Petitioner has raised the savings clause, he is not entitled to its application." ECF No. 8 at 7. The magistrate judge determined that the claims raised by the petitioner do not remotely satisfy the savings clause and are clearly allegations that could or should have been raised on appeal or in his first § 2255 motion. Id. The magistrate judge states that "[e]ven if Petitioner satisfied the first and third elements of Jones⁴, the crimes for which he was convicted remain criminal offenses, and therefore, he cannot satisfy the second element of Jones." Id. Upon review, the magistrate judge concluded that "because Petitioner attacks the validity of his conviction and fails to establish that he meets the Jones requirements, he is unable to satisfy the § 2255 savings clause to seek relief under § 2241." Id. Thus, the magistrate judge recommended that the petitioner's petition (ECF No. 1) be denied and dismissed without prejudice because this Court lacks jurisdiction to entertain the same. Id.

⁴In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000).

Upon review, this Court finds no clear error in the determinations of the magistrate judge and thus upholds his recommendation.

IV. Conclusion

For the reasons set forth above, the report and recommendation of the magistrate judge (ECF No. 8) is AFFIRMED and ADOPTED in its entirety. Accordingly, the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (ECF No. 1) is DENIED and DISMISSED WITHOUT PREJUDICE.

This Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action would result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

It is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se petitioner by certified mail and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: May 30, 2019

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE